



Reprinted
March 30, 2005

ENGROSSED HOUSE BILL No. 1112

DIGEST OF HB 1112 (Updated March 29, 2005 2:00 pm - DI 106)

Citations Affected: IC 35-38; IC 35-50.

Synopsis: Direct placement in community corrections. Allows certain persons convicted of operating a vehicle while intoxicated with two prior unrelated convictions to be placed directly in a community corrections program if: (1) the person is required to serve the nonsuspendible part of the person's sentence in a work release program or a program that uses electronic monitoring as part of the person's supervision; and (2) the person participates in a court approved substance abuse program. Provides that a person convicted of operating a vehicle while intoxicated causing death or causing serious bodily injury may not be placed directly in a community corrections program, and specifies that operating while intoxicated causing death as a Class B felony by a person at least 21 years old is nonsuspendible.

Effective: July 1, 2005.

Richardson, Ulmer, Porter, Dodge

(SENATE SPONSORS — LONG, LANANE, BRODEN, HOWARD)

January 6, 2005, read first time and referred to Committee on Courts and Criminal Code.
January 13, 2005, amended, reported — Do Pass; referred to Committee on Ways and Means pursuant to Rule 127.

January 27, 2005, reported — Do Pass.

January 31, 2005, read second time, ordered engrossed. Engrossed.

February 3, 2005, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 14, 2005, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

March 24, 2005, amended, reported favorably — Do Pass.

March 28, 2005, read second time, ordered engrossed. Engrossed. Returned to second reading.

March 29, 2005, reread second time, amended, ordered engrossed.

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EH 1112—LS 6421/DI 106+



First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1112

A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-38-2.6-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Except as
3 provided in subsection (b), this chapter applies to the sentencing of a
4 person convicted of:
- 5 (1) a felony whenever any part of the sentence may not be
 - 6 suspended under IC 35-50-2-2 or IC 35-50-2-2.1; ~~or~~
 - 7 (2) a misdemeanor whenever any part of the sentence may not be
 - 8 suspended; **or**
 - 9 (3) **an offense described in IC 35-50-2-2(b)(4)(Q) (operating a**
 - 10 **vehicle while intoxicated with at least two (2) prior unrelated**
 - 11 **convictions), if the person:**
 - 12 (A) **is required to serve the nonsuspendible part of the**
 - 13 **sentence in a community corrections:**
 - 14 (i) **work release program; or**
 - 15 (ii) **program that uses electronic monitoring as a part of**
 - 16 **the person's supervision; and**
 - 17 (B) **participates in a court approved substance abuse**

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1 **program.**

2 (b) This chapter does not apply to persons convicted of any of the
3 following:

4 (1) Sex crimes under IC 35-42-4 or IC 35-46-1-3.

5 (2) **Except as provided in subsection (a)(3)**, any of the felonies
6 listed in IC 35-50-2-2(b)(4).

7 **(3) An offense under IC 9-30-5-4.**

8 **(4) An offense under IC 9-30-5-5.**

9 SECTION 2. IC 35-50-2-2 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The court may
11 suspend any part of a sentence for a felony, except as provided in this
12 section or in section 2.1 of this chapter.

13 (b) With respect to the following crimes listed in this subsection, the
14 court may suspend only that part of the sentence that is in excess of the
15 minimum sentence, unless the court has approved placement of the
16 offender in a forensic diversion program under IC 11-12-3.7:

17 (1) The crime committed was a Class A or Class B felony and the
18 person has a prior unrelated felony conviction.

19 (2) The crime committed was a Class C felony and less than seven
20 (7) years have elapsed between the date the person was
21 discharged from probation, imprisonment, or parole, whichever
22 is later, for a prior unrelated felony conviction and the date the
23 person committed the Class C felony for which the person is
24 being sentenced.

25 (3) The crime committed was a Class D felony and less than three
26 (3) years have elapsed between the date the person was
27 discharged from probation, imprisonment, or parole, whichever
28 is later, for a prior unrelated felony conviction and the date the
29 person committed the Class D felony for which the person is
30 being sentenced. However, the court may suspend the minimum
31 sentence for the crime only if the court orders home detention
32 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
33 sentence specified for the crime under this chapter.

34 (4) The felony committed was:

35 (A) murder (IC 35-42-1-1);

36 (B) battery (IC 35-42-2-1) with a deadly weapon or battery
37 causing death;

38 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;

39 (D) kidnapping (IC 35-42-3-2);

40 (E) confinement (IC 35-42-3-3) with a deadly weapon;

41 (F) rape (IC 35-42-4-1) as a Class A felony;

42 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A

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- 1 felony;
- 2 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
- 3 felony;
- 4 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
- 5 with a deadly weapon;
- 6 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
- 7 injury;
- 8 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
- 9 or with a deadly weapon;
- 10 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
- 11 weapon;
- 12 (M) escape (IC 35-44-3-5) with a deadly weapon;
- 13 (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 14 (O) dealing in cocaine, a narcotic drug, or methamphetamine
- 15 (IC 35-48-4-1) if the court finds the person possessed a firearm
- 16 (as defined in IC 35-47-1-5) at the time of the offense, or the
- 17 person delivered or intended to deliver to a person under
- 18 eighteen (18) years of age at least three (3) years junior to the
- 19 person and was on a school bus or within one thousand (1,000)
- 20 feet of:
- 21 (i) school property;
- 22 (ii) a public park;
- 23 (iii) a family housing complex; or
- 24 (iv) a youth program center;
- 25 (P) dealing in a schedule I, II, or III controlled substance
- 26 (IC 35-48-4-2) if the court finds the person possessed a firearm
- 27 (as defined in IC 35-47-1-5) at the time of the offense, or the
- 28 person delivered or intended to deliver to a person under
- 29 eighteen (18) years of age at least three (3) years junior to the
- 30 person and was on a school bus or within one thousand (1,000)
- 31 feet of:
- 32 (i) school property;
- 33 (ii) a public park;
- 34 (iii) a family housing complex; or
- 35 (iv) a youth program center;
- 36 (Q) an offense under IC 9-30-5 (operating a vehicle while
- 37 intoxicated) and the person who committed the offense has
- 38 accumulated at least two (2) prior unrelated convictions under
- 39 IC 9-30-5;
- 40 (R) an offense under IC 9-30-5-5(b) (operating a vehicle while
- 41 intoxicated causing death); if the person had:
- 42 (i) ~~at least fifteen-hundredths (0.15) gram of alcohol per one~~

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1 hundred (~~100~~) milliliters of the person's blood; or at least
 2 ~~fifteen-hundredths~~ (0.15) gram of alcohol per two hundred
 3 ~~ten~~ (210) liters of the person's breath; or
 4 (ii) a controlled substance listed in schedule I or II of
 5 ~~IC 35-48-2~~ or its metabolite in the person's blood; or

6 (S) aggravated battery (IC 35-42-2-1.5).

7 (c) Except as provided in subsection (e), whenever the court
 8 suspends a sentence for a felony, it shall place the person on probation
 9 under IC 35-38-2 for a fixed period to end not later than the date that
 10 the maximum sentence that may be imposed for the felony will expire.

11 (d) The minimum sentence for a person convicted of voluntary
 12 manslaughter may not be suspended unless the court finds at the
 13 sentencing hearing that the crime was not committed by means of a
 14 deadly weapon.

15 (e) Whenever the court suspends that part of an offender's (as
 16 defined in IC 5-2-12-4) sentence that is suspendible under subsection
 17 (b), the court shall place the offender on probation under IC 35-38-2 for
 18 not more than ten (10) years.

19 (f) An additional term of imprisonment imposed under
 20 IC 35-50-2-11 may not be suspended.

21 (g) A term of imprisonment imposed under IC 35-47-10-6 or
 22 IC 35-47-10-7 may not be suspended if the commission of the offense
 23 was knowing or intentional.

24 (h) A term of imprisonment imposed for an offense under
 25 IC 35-48-4-6(b)(1)(B) may not be suspended.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1112, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 9 through 16, begin a new line block indented and insert:

"(3) an offense described in IC 35-50-2-2(b)(4)(Q) (operating a vehicle while intoxicated with at least two (2) prior unrelated convictions), if the person:

(A) is required to serve the nonsuspendible part of the sentence in a community corrections:

(i) work release program; or

(ii) program that uses electronic monitoring as a part of the person's supervision; and

(B) participates in a court approved substance abuse program."

and when so amended that said bill do pass.

(Reference is to HB 1112 as introduced.)

ULMER, Chair

Committee Vote: yeas 12, nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1112, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

ESPICH, Chair

Committee Vote: yeas 19, nays 0.

SENATE MOTION

Madam President: I move that Senators Broden and Howard be added as cosponsors of Engrossed House Bill 1112.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1112, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, after line 6, begin a new line blocked left and insert:

"(3) An offense under IC 9-30-5-4.

(4) An offense under IC 9-30-5-5."

and when so amended that said bill do pass.

(Reference is to HB 1112 as printed January 28, 2005.)

LONG, Chairperson

Committee Vote: Yeas 11, Nays 0.

 SENATE MOTION

Madam President: I move that Engrossed House Bill 1112, which was ordered engrossed on March 28, 2005, be returned to second reading for purposes of amendment.

LONG

 SENATE MOTION

Madam President: I move that Engrossed House Bill 1112 be amended to read as follows:

Page 2, after line 8, begin a new paragraph and insert:

"SECTION 2. IC 35-50-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.7:

(1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.

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(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

- (A) murder (IC 35-42-1-1);
- (B) battery (IC 35-42-2-1) with a deadly weapon or battery causing death;
- (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- (D) kidnapping (IC 35-42-3-2);
- (E) confinement (IC 35-42-3-3) with a deadly weapon;
- (F) rape (IC 35-42-4-1) as a Class A felony;
- (G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;
- (H) child molesting (IC 35-42-4-3) as a Class A or Class B felony;
- (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;
- (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;
- (K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;
- (L) resisting law enforcement (IC 35-44-3-3) with a deadly weapon;
- (M) escape (IC 35-44-3-5) with a deadly weapon;
- (N) rioting (IC 35-45-1-2) with a deadly weapon;
- (O) dealing in cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the

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person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(P) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(Q) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5;

(R) an offense under IC 9-30-5-5(b) (operating a vehicle while intoxicated causing death); if the person had:

- (i) at least fifteen-hundredths (0.15) gram of alcohol per one hundred (100) milliliters of the person's blood; or at least fifteen-hundredths (0.15) gram of alcohol per two hundred ten (210) liters of the person's breath; or
- (ii) a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood; or

(S) aggravated battery (IC 35-42-2-1.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

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(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended."

(Reference is to EHB 1112 as printed March 25, 2005.)

YOUNG R MICHAEL

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